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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 IP LEARN, LLC,
13 Plaintiff and Counterdefendant,
14 v.
15 SABA SOFTWARE INC.; and DOES 1-10,
16 Defendant and Counterclaimant.
17
18

No. C 02-02634 JW

**SABA SOFTWARE, INC.'S
MOTION TO AMEND
PRELIMINARY INVALIDITY
CONTENTIONS PURSUANT TO
LOCAL RULE 3-7**

Date: No hearing requested
Judge: Hon. James Ware
Courtroom: 8, 4th Floor

19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 PLEASE TAKE NOTICE that defendant Saba Software, Inc. hereby moves this Court to
21 amend its preliminary invalidity contentions pursuant to Local Rule 3-7. Plaintiff IP Learn, LLC
22 does not oppose such a motion. Saba does not request a hearing on this matter, but if the Court
23 wishes to hear argument, Saba requests that this motion be heard in conjunction with Saba's
24 summary judgment motions, scheduled for 9:00 a.m., June 9, 2003.
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Pursuant to Northern District Patent Local Rule 3-7, Saba Software, Inc. (“Saba”) seeks leave of this Court to amend its preliminary invalidity contentions to take into account a thesis written by Iraj Hirmanpour entitled “A Computerized Model For Placement And Diagnostic Testing In College Remedial Mathematics.”

After serving its preliminary invalidity contentions, Saba obtained the Hirmanpour thesis from a commercial thesis depository service. (Declaration of David E. Melaugh re: Motion to Amend Preliminary Invalidity Contentions, filed herewith, ¶ 1.) Saba served a copy of the thesis on IP Learn on February 11, 2003. (*Id.* ¶ 1 & Ex. A.) At that time, Saba sought IP Learn’s consent to update its invalidity contentions to take into account the Hirmanpour thesis. (*Id.* Ex. A.) Receiving no response, we requested such consent again on March 18, 2003, this time attaching a table containing Saba’s proposed amendment to its invalidity contentions. (*Id.* Exs. B & C (“Table 9”).) On April 1, 2003, IP Learn indicated that it would not oppose a motion to supplement Saba’s invalidity contentions by adding Table 9. (*Id.* Ex. D.) On May 1, 2003, IP Learn’s counsel confirmed that IP Learn would not oppose the amendment to Saba’s invalidity contentions discussed in the parties’ correspondence. (*Id.* ¶ 6.)

For the reasons stated above, Saba seeks leave of this Court to amend its preliminary invalidity contentions to add “Table 9” (attached as Exh. C to the accompanying declaration).

Dated: May 5, 2003

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